

# City of Detroit



## CITY COUNCIL

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TO: The Honorable City Council

FROM: David Whitaker   
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DATE: June 21, 2006

RE: **PROPOSED WAYNE COUNTY LAND BANK CORPORATION**

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The Research & Analysis Division (RAD) was requested by the Honorable City Council to clarify the jurisdiction of the proposed Wayne County Land Bank Corporation<sup>1</sup> (WCLBC) as set forth in the intergovernmental agreement (IGA) adopted by the Wayne County Commission on June 15<sup>th</sup>. This report provides a comparison between the Wayne County IGA and the IGA proposed by the City Administration for the formation of a Detroit Land Bank Authority (DLBA). It also addresses the questions presented by this Honorable Body by: providing relevant background information, delineating how the WCLBC can receive land in its inventory, outlines a proposal before the State land bank authority, the lease of land bank property, tax implications and outlining potential impacts of the County land bank on the City of Detroit.

### **A. Comparison of the Intergovernmental Agreements**

The County and City intergovernmental agreements are almost identical. Both documents were drafted using the Genesee County Land Bank IGA as a template.<sup>2</sup> Both proposed land banks are governmental, non-profit, tax-exempt entities that are dedicated to respond to the issues of vacant and abandoned properties with a focus on those that have been through the tax foreclosure process. The City of Detroit is the only city given the authority in the controlling statute to form its own land bank authority.<sup>3</sup>

The most significant difference between the two documents is the structure of the Board. The County IGA provides for a five (5) member Board that serves at the pleasure of the appointing authority with the following members:

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<sup>1</sup> The County land bank is not officially created until the IGA is approved by the Attorney General, entered into by the State Land Bank Authority and filed with the Ingham and Wayne County Clerks as well as the Michigan Secretary of State. The first major step in creating a land bank authority was taken by the County Commission by adopting the resolution.

<sup>2</sup> Ingham and Saginaw Counties also used the Genesee IGA as a template. Muskegon, Berrien, Grand Traverse, Calhoun, and Jackson Counties are in the process of forming County Land Bank Authorities and are also using the Genesee County land bank model.

<sup>3</sup> MCL 124.773(3).

- County Treasurer (Board Chair)<sup>4</sup>
- 3 members appointed by the County Executive
- 1 Commissioner appointed by a majority vote of the Commission

In contrast, the Detroit proposal contemplates a seven (7) member Board where members can only be removed for cause, with the following composition:

- 3 ex-officio members (Directors of the Planning & Development Department, City Planning Commission, and the Detroit Economic Growth Corporation or their designees)
- 3 members appointed by the Mayor (with the advice and consent of Council)
- 1 member appointed by City Council (with the advice and consent of the Mayor)

The Detroit IGA also specifies categories for the appointing authority to consider in making its appointments. For example, the Mayor is encouraged to appoint one of each of the following: for-profit and non-profit real estate professionals with experience operating in the City of Detroit and a “community leader with experience representing resident stakeholder interest and who works with various communities and institutions.” Council is encouraged to appoint a representative of a Detroit-based economic development intermediary such as the Local Initiatives Support Coalition, Detroit Investment Fund, Great Lakes Capital Fund, Fannie Mae, or the Michigan Interfaith Trust Fund.<sup>5</sup>

Members of this Honorable Body have suggested alternative composition of the Board in the past including: addition of one or two Council members, or community advocates from distinct areas of the City (by dividing the City into districts) or dividing the four appointees between the Mayor and Council. Increasing the size of the Board was also discussed previously. It has been asserted by land bank supporters that a larger Board could potentially complicate its ability to conduct business.

One positive change in the Detroit proposal is that it was amended at the request of Council so that at least four of the seven Board members must be residents and registered electors of the City of Detroit.

Another significant difference between the IGAs is the proposal for the WCLBC includes language that if the Treasurer withdraws from the IGA<sup>6</sup> it must be under terms contained in a resolution approved by the County Commission with the concurrence of the County Executive.<sup>7</sup> The disposition of assets remaining in the WCLBC to a successor entity must also follow the aforementioned process<sup>8</sup> as well as amendments to the IGA.<sup>9</sup> RAD recommends that similar language be added to the DLBA proposal, since approval by City Council is required to create the authority, it should also be required to dissolve or modify it.

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<sup>4</sup> WCLBC proposal at § 4.09; MCL 124.773, which states the County Treasurer must be a member of the Board. The WCLBC proposal appointing the Treasurer the Board Chair follows other operating land banks in the State of Michigan.

<sup>5</sup> The Great Lakes Capital Fund and Fannie Mae are not Detroit-based, but maintain a strong presence in the community.

<sup>6</sup> The IGA is between the Michigan Land Bank Fast Track Authority and the Office of the Wayne County Treasurer.

<sup>7</sup> § 8.02.

<sup>8</sup> § 8.03(b).

<sup>9</sup> §9.11.

The signature page of the WCLBC proposal is also distinguishable. It contains a signature block for the County Executive, which is not relevant to the DLBA proposal, and a statement that the IGA has been approved by the County Commission listing the resolution number and the date it was adopted. The current DLBA proposal does not contain a statement indicating approval by City Council. A former draft of the DLBA proposal did include language that this Honorable Body did adopt a resolution and listed the corresponding date.<sup>10</sup> RAD recommends that this be added to the current DLBA document. It is important because City Council is not listed as a signatory to the document on the authorization page and would not be considered a party to the agreement per the document's definitions.<sup>11</sup> State law also provides that "unless **specifically reserved or conditioned upon the approval of the governing body** of a qualified city, all powers granted under this act to a local authority may be exercised . . . without the approval of the governing body of the qualified city, notwithstanding any charter, ordinance or resolution to the contrary."<sup>12</sup> Therefore, Council must preserve its approval function (or other conditions it sees fit) in the IGA itself or any subsequent action by this Honorable Body will not affect the DLBA once it is created.<sup>13</sup>

The minor differences between the two IGAs are the exclusion or inclusion of paragraphs that do not substantively change the agreements because the provisions are covered by State law. For example, the WCLBC proposal includes language at § 6.09 that it will not transfer, sell or convey property that the Michigan Department of Environmental Quality (DEQ) has determined to be an acute threat until the DEQ has been granted access for testing and the environmental hazard has been abated. The DLBA proposal lacks specific language to this effect; however, the controlling statute contains provisions with the same effect.<sup>14</sup>

The County proposal also includes a section that states the WCLBC will exercise its powers independently of the County but can receive staff and other support from Wayne County.<sup>15</sup> A similar provision is not included in the DLBA proposal, but again is part of the controlling statute that "an authority . . . may contract with others, public or private, for the provision of all or a portion of the services necessary for the management and operation of the authority."<sup>16</sup>

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<sup>10</sup> Draft of Administration DLBA proposal dated January 13, 2005.

<sup>11</sup> The executive and legislative branches of City government have debated the definition of "City" to include both the Mayor and City Council or the Mayor independently at length. Relative to the creation of the DLBA, City Council must approve of the IGA and therefore should be listed as having approved of the IGA on the signatory page.

<sup>12</sup> MCL 124.773(12).

<sup>13</sup> Please refer to the following RAD reports: *Land Bank Legislation and Its Potential Impact on Land Use and Disposition Process*, dated August 4, 2004; and *Proposed Land Bank Authority*, dated April 5, 2005. If courtesy copies are needed, please contact RAD.

<sup>14</sup> MCL 124.760.

<sup>15</sup> § 4.14.

<sup>16</sup> MCL 124.754(3).

## **B. Background Information**

RAD has been monitoring and reporting on this important topic since 2004. This section will only cover current information relative to the WCLBC<sup>17</sup> proposal. The Wayne County Commission Committee of the Whole had a land bank presentation on May 16, 2006, by representatives from the Corporation Counsel and Treasurer's Offices. This was the first opportunity for the Committee of the Whole to examine the issue since it was first voted down. The land bank proposal had been in the County Commission Economic Development Committee and the Ad Hoc Committee in the past.

After a brief land bank presentation and historical information regarding local land use, the Chairperson opened up the table for Commissioners' questions. The majority of the Commissioners' concerns mirror those articulated by this Honorable Body during past discussions regarding the creation of a Detroit Land Bank Authority (DLBA). The County's land bank proposal is put forth to facilitate infill housing and neighborhood development to reduce the number of vacant and abandoned property in Wayne County. Representatives from the Treasurer's Office cited approximately 3,000 properties under the County Treasurer's control, approximately 6,000 properties under State land bank control and an estimated 30,000 under the control of the City of Detroit. The number of properties located within City limits under the control of the County and State Land Bank Authorities is a significant concern. Any development or use of land located in the City must adhere to the City's zoning and planning regulations. However, the City (or a representative on its behalf) is not included in the negotiation for the transfer of the land nor has input as to the proposed purchaser. Highlights of the May 16<sup>th</sup> discussion follow:

- Governance. How the land bank would be set up and its governance was a significant concern. It was noted that approximately 90% of the properties are in the City of Detroit. The County proposal remains unchanged from last year as to the governance structure that gives the Commission one seat. The Commissioners noted their continued interest in another seat on the land bank authority board during the May meeting, but passed the resolution one month later without amendment to the Board composition. The governing statute does not proscribe how board appointments are to be made, just that the board be comprised of an odd number of members.<sup>18</sup>
- Local Control. Corporation Counsel indicated that the City of Detroit would not be excluded from obtaining property located within its borders because it would retain its right of refusal under the tax foreclosure process. Emphasis was placed on the fact that site plan approval and local zoning regulations would still be in effect.
- There was an understanding at the County presentation that one of the appointments to the land bank authority board would be a Commissioner from the City of Detroit. This is not reflected in the final WCLBC proposal.
- Incompatibility of Office. Relative to the Commission holding two seats on the authority board, corporation counsel indicated that it had not looked at the incompatibility of office issue but that the draft IGA had been submitted to the State Attorney General's office for review and it was not raised as an issue.

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<sup>17</sup> After problems with the Wayne County Airport Authority, the County Commission was very concerned about the land bank being an "Authority," thereafter the County's proposal has been termed the Land Bank Corporation. It should be noted that the distinction is in name only and the entity would still operate as an authority under State law.

<sup>18</sup> MCL 124.773(6)(c).

- Property. The representatives indicated that the land bank corporation would not go into a community unless it was invited in. This portion of the discussion was very esoteric because the representatives defined “invited in” as the County obtaining parcels through the tax foreclosure process and a municipality’s decision not to exercise its right of refusal for the parcel prior to auction as well as the County’s ability to identify parcels of land for development in a community.

The representatives indicated that not all properties in the Treasurer’s inventory would be transferred to the land bank immediately, but rather as developers are identified or a development plan has been established. It was also indicated that the auction of tax-foreclosed land mandated by State law would also not be affected. Note that the Genesee County Treasurer bundles the tax reverted properties for sale and requires a bond be posted in the amount of the demolition/clearance for all parcels in the bundle. Any bundles that are not sold are then transferred into the Genesee County Land Bank.

- Tax incentives. The County Executive has proposed that the tax incentive program, Transforming Underdeveloped Residential & Business Opportunities (TURBO), will be a program under the County’s land bank. Limited details about the program are available at this time. At the 2005 State of the County address, the County Executive indicated that under the program underdeveloped parcels would be exempt from property taxes for one year and in future years<sup>19</sup> will refund up to 50% of property taxes paid to offset the investment made in the property. County Commissioners have expressed concern regarding the program. In Genesee County, although tax incentives such as Brownfields have been used, they are not the primary program of the Genesee County Land Bank.

The presenters also indicated that property owners would have the option to deed their property to the land bank authority for up to one year. Then the authority deeds it back to the property owner so that they can receive Brownfield and other financial incentives. The County Commissioners had oversight concerns such as who can deed their property to the land bank and who ultimately gets control of the property.

- Funding. Questions regarding the funding source for the land bank to obtain properties were also raised. The Treasurer’s Office indicated that it had not discussed whether to charge the land bank money for the parcels it will transfer but that the costs relative to the property transfers would be minimal. The land bank has the ability to borrow money levied against future taxes and can sell bonds to obtain money for financing its operations. Local governments can dedicate a portion of tax revenues to fund a local land bank authority. For a period of five (5) years after the land bank transfers land the entity is able to capture 50% of the tax revenue generated by that parcel. The remaining 50% of the taxes is distributed on a pro rata basis to the taxing jurisdictions. The authority can also receive grant funds or donations from individuals or businesses.

The concerns and questions raised by the County Commission in May of 2006 are very significant. As noted above, many of the County Commission’s concerns mirrored those of City Council. RAD is unaware of the Administration responding in writing (as requested) to the

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<sup>19</sup> The length of time for return of 50% of the property taxes is not specified.

outstanding concerns of Council that were presented at the last comprehensive land bank discussion on March 17, 2005.

### **C. Property Acquisition**

Under Article VI of the Wayne County Land Bank Corporation (WCLBC) IGA and the Detroit Land Bank Authority (DLBA) proposal, the land banks can acquire real or personal property (or interests in property) by: gift, devise, transfer, exchange, foreclosure, or purchase.<sup>20</sup> It can also receive a deed to property that is in the process of tax reversion in lieu of the property being foreclosed with a waiver from all of the taxing jurisdictions and the foreclosing governmental unit that will be affected.<sup>21</sup>

Wayne County, as the foreclosing governmental unit, cannot transfer property that is in the tax reversion process,<sup>22</sup> until the procedures set forth in the General Property Tax Act, 1893 PA 206 as amended by 1999 PA 123, have occurred and the following rights of refusal are offered:

1. The State of Michigan has the first right of refusal to purchase the property prior to the minimum bid auction. It may purchase the property at the minimum bid or the fair market value whichever is greater.
2. The City of Detroit has the ability to purchase the property for a public purpose at the minimum bid price if the State of Michigan decides not to purchase at the minimum bid auction.<sup>23</sup>
3. The County of Wayne has the ability to purchase the property for the minimum bid price if the City elects not to exercise its right of refusal. Note that the County is not restricted to obtain the property for a public purpose.<sup>24</sup>
4. If the property is not sold at the second auction where no minimum bid is required, Wayne County transmits a list of unsold properties to the City of Detroit by December 1<sup>st</sup>.
5. The City has until December 29<sup>th</sup> to object in writing to receipt of the unsold properties. No action results in the City obtaining all of the unsold properties.<sup>25</sup>
6. On December 30<sup>th</sup>, the County transfers all unsold property to the City unless a written objection has been filed. If the City objects to the receipt of a parcel, the County retains possession of the property.

Pursuant to MCL 211.78(m)(13), all liens<sup>26</sup> on property sold, transferred or retained by the foreclosing governmental unit are canceled.

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<sup>20</sup> This language mirrors MCL 124.755(1).

<sup>21</sup> MCL 124.756(3).

<sup>22</sup> MCL 124.755(6) and 211.78(m).

<sup>23</sup> The foreclosing governmental unit for the City of Detroit is the County of Wayne. 2003 PA 246.

<sup>24</sup> The Genesee and Ingham County Land Banks have requested that the local units of government waive the right of refusal so that property located within its jurisdiction can pass from the foreclosing governmental unit to the land bank.

<sup>25</sup> Note that the City has only taken a select number of properties per year since Wayne County became the foreclosing governmental unit for the City of Detroit.

<sup>26</sup> The tax foreclosure process cancels all demolition, safety repairs, debris removal, and sewer or water charges.

Liens recorded by the Department of Environmental Quality are not extinguished upon foreclosure. Please refer to

Although no operating Michigan land bank has yet exercised this power, each has the ability to pursue an expedited quiet title and foreclosure action for property or property interests that it holds. This procedure, set forth in MCL 124.759, closely follows the foreclosure process utilized by County Treasurers in foreclosing on properties with outstanding taxes. It gives the land bank fee simple title to the property and extinguishes all liens and property interests of other persons or entities in the property. Therefore, if the land bank has a property interest in a parcel of tax-reverted land, it could utilize the expedited foreclosure process to quiet the title to the real estate and gain a marketable title.

The WCLBC is not prohibited from receiving, nor is the City of Detroit prohibited from transferring or selling property in its inventory to a local land bank authority<sup>27</sup>. Neither the Wayne County Treasurer nor the WCLBC can take control of property owned solely by the City of Detroit. Additionally, the City can prevent the WCLBC from receiving any future tax reverted parcels by exercising its rights of refusal.<sup>28</sup>

#### **D. Lease of Property and the Relationship to Taxation**

All land bank property is deemed public property devoted to an essential public and governmental purpose and is exempt from taxation.<sup>29</sup> Similarly, all real or personal property under the control of a land bank, bonds issued as well as its income and operations are exempt from all taxation by the State or any of its local taxing jurisdictions.<sup>30</sup> Land banks are permitted to establish and collect rents or fees for the use of property under its control.<sup>31</sup>

If the land bank rented apartments in a building it owned and operated located on land it controls, it would not be subject to taxation. However, if the land bank leased land to a business owner who operated a privately owned building on the premises, the building and the business operations would be subject to taxation. If the land bank owned the building as well as the land, only the business operations of the entity would be taxed.

The Genesee County Land Bank is an excellent example for taxation because it leases out both residential and commercial space. For residential properties, the land bank is not required to pay property taxes. Under the lease, the occupants of the residential structures are responsible for any utility costs. The local municipality does not receive any tax revenues from residential properties that are held by the land bank. The Genesee County Land Bank took over operations of two buildings in the Great Lakes Technical Center that have commercial leases. The land bank is not required to pay real property taxes on the buildings. The commercial tenants are responsible for personal property taxes on their business operations. Therefore, the local municipality can assess a business' personal property and levy taxes but will not receive any real property taxes because the property is controlled by the land bank.

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RAD's report *Relationship Between City of Detroit Demolition Liens and the Wayne County Tax Foreclosure Process*, dated March 17, 2006, for further information.

<sup>27</sup> MCL 124.755(4) and 124.773(8).

<sup>28</sup> This would significantly increase the City's inventory of surplus real property and expose the City to greater maintenance costs as well as liability concerns. This would also not preclude individual property owners from deeding or selling their Detroit property to the land bank.

<sup>29</sup> MCL 124.763.

<sup>30</sup> MCL 124.763.

<sup>31</sup> MCL 142.756(1)(b).

The most interesting Genesee Land Bank example is its headquarters, which has retail, commercial office and residential space as well as the land bank offices. The building is located in Downtown Flint and is in a renaissance zone, which expires in 2008. The ownership of the building after 2008 is significant. If the County of Genesee owns the structure, the building will not be subject to real property taxes, but the commercial operations and the residential tenants will be taxable. If the County is able to transfer the building to the land bank, only the business operations of the commercial and retail tenants will be taxable.<sup>32</sup>

The presumption of advocates of land banks is that it returns abandoned properties to productive use and spurs neighborhood development. This presumption is intended to justify the 50% tax recapture for five years and the land bank's ability to hold land tax-free.

#### **E. Potential State Land Bank Proposal**

There has been discussion of a proposal at Michigan Land Bank Fast Track Authority that contemplates a local authority (County or City) having the ability to manage the sales of State inventory in addition to its own inventory. Land would not change ownership from the State land bank to the local land banks, but the local authority could list the property and participate in the negotiation of the sale. A cooperative sales process such as this could reduce administrative burdens on the State authority and maintain local participation in the land disposition process. This proposal is likely to be discussed at the next State land bank meeting. RAD will provide an update to this Honorable Body after the next meeting.

#### **F. Potential Impact of the WCLBC on the City of Detroit**

If the Wayne County Land Bank Corporation is approved by the Michigan Fast Track Authority and is created, its impact on the City would be significant. Over 90% of the tax-foreclosed property controlled by the Wayne County Treasurer is located within the City of Detroit. Even if, as the County Treasurer has indicated, all of the properties are not transferred automatically to the land bank, many of the parcels available for development are located within City limits. Therefore, the WCLBC will have the ability to hold, sell, or convey land located in Detroit subject to local land use controls. Recognizing that the supply of vacant land in Detroit is greater than the development interest or demand, it is foreseeable that any local land bank (County or City) will have to hold land undeveloped, similar to the State Authority holding Detroit properties.

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<sup>32</sup> The issue is the quit claim deed on file is in the County's name and the County issued the bonds to pay for the building renovations on full faith and credit of the County. Therefore, the County transferring the building to the land bank could be construed, as a loan would not be legal under Michigan law.